

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lianne May	Team: Squad #7	CCRB Case #: 202101897	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 03/22/2021 8:08 PM	Location of Incident: § 87(2)(b) and § 87(2)(b)	Precinct: 120	18 Mo. SOL 9/22/2022	EO SOL 9/22/2022	
Date/Time CV Reported Tue, 03/23/2021 3:03 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 03/23/2021 3:03 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Maresca	26252	968602	120 PCT
2. POM Robert Leibowitz	19690	968568	120 PCT
3. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Albert Acierno	23341	968915	120 PCT
2. POM David Black	20798	963875	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Robert Leibowitz	Abuse: Police Officer Robert Leibowitz stopped § 87(2)(b)	
B.POM Robert Leibowitz	Abuse: Police Officer Robert Leibowitz stopped § 87(2)(b)	
C.POM Robert Leibowitz	Abuse: Police Officer Robert Leibowitz entered the backyard of § 87(2)(b) in Staten Island	
D.POM Robert Leibowitz	Abuse: Police Officer Robert Leibowitz entered the backyard of § 87(2)(b) in Staten Island	
E.POM Joseph Maresca	Abuse: Police Officer Joseph Maresca entered the backyard of § 87(2)(b) in Staten Island	
F.POM Joseph Maresca	Abuse: Police Officer Joseph Maresca entered the backyard of § 87(2)(b) in Staten Island	
G.POM Joseph Maresca	Abuse: Police Officer Joseph Maresca damaged § 87(2)(b)'s vehicle at § 87(2)(b) in Staten Island	
H. Officers	Abuse: Officers drew their guns.	

Case Summary

On March 23, 2021, § 87(2)(b) called the CCRB to report the following complaint (BR1).

At 8:08PM on March 22, 2021, Police Officer David Black, Police Officer Albert Acierno, Police Officer Robert Leibowitz, and Police Officer Joseph Maresca, all of the 120 Precinct, responded to a 911 call from a female caller, a mother, stating that someone has an order of protection (OOP) against her son at § 87(2)(b) in Staten Island. The mother told the officers that the OOP was between her son and his girlfriend, § 87(2)(b) and § 87(2)(b) and pointed to them in a vehicle across the street. PO Leibowitz attempted to stop § 87(2)(b) and § 87(2)(b) because they were under investigation from the allegation of the OOP (Allegations A and B: Abuse of Authority, § 87(2)(g)). PO Leibowitz and PO Maresca then entered the backyards of § 87(2)(b) and § 87(2)(b) to follow § 87(2)(b) and § 87(2)(b) (Allegations C-F: Abuse of Authority, § 87(2)(g)). PO Maresca jumped on § 87(2)(b)'s car in following § 87(2)(b) and § 87(2)(b) (Allegation G: Abuse of Authority, § 87(2)(g)). § 87(2)(b) while watching this from her residence at § 87(2)(b) alleged that officers drew their guns when they caught up to § 87(2)(b) (Allegation H: Abuse of Authority, § 87(2)(g)).

The investigation received BWC from PO Acierno (BR2), PO Black (BR3), PO Leibowitz (BR4), and PO Maresca (BR5).

Findings and Recommendations

Allegation A-Abuse of Authority: Police Officer Robert Leibowitz stopped § 87(2)(b)

Allegation B- Abuse of Authority: Police Officer Robert Leibowitz stopped § 87(2)(b)

Allegation C- Abuse of Authority: Police Officer Robert Leibowitz entered the backyard of § 87(2)(b) in Staten Island

Allegation D- Abuse of Authority: Police Officer Robert Leibowitz entered the backyard of § 87(2)(b) in Staten Island

Allegation E-Abuse of Authority: Police Officer Joseph Maresca entered the backyard of § 87(2)(b) in Staten Island

Allegation F-Abuse of Authority: Police Officer Joseph Maresca entered the backyard of § 87(2)(b) in Staten Island

Allegation G-Abuse of Authority: Police Officer Joseph Maresca damaged § 87(2)(b)'s vehicle at § 87(2)(b) in Staten Island

Allegation H-Abuse of Authority: Officers drew their guns.

§ 87(2)(b) lives at § 87(2)(b) in Staten Island between § 87(2)(b) and § 87(2)(b) property has a carport and a backyard surrounded by a wooden and metal fence next to § 87(2)(b). The backyards of § 87(2)(b) and § 87(2)(b) are connected. Both yards can be accessed through the respective property's driveways via an enclosed fence (BR6).

At about 8:30PM on March 22, 2021, § 87(2)(b) looked out her window and saw officers running from her backyard. § 87(2)(b) did not see the officer in the backyard, but knew the officer was back there because of the direction from which he came. She believed that to get over her locked gate and fence, he had to step onto the car, but did not see this. He may have gone into the backyard at § 87(2)(b) (BR6).

§ 87(2)(b) testified she saw an officer "scoot" in the small space between her fence and her car. This resulted in a "butt print" in the roof, a foot print dent in the hood of the car, a long scratch on the back window through the piping that defrosts the window, and black paint was scratched off the driver's side mirror (BR6). § 87(2)(b) sent pictures of her car after the damage (BR7). She did not have this repaired as she did not have the money to and is seeking financial help from the NYPD for the damages. § 87(2)(b) alleged that she saw more officers holding their guns out on Warren Street with an "assailant" on the ground (BR6).

At 8:08PM, a female called 911 to report an alleged order of protection violation against her son at § 87(2)(b) (BR8). This report will refer to this female as the mother as she did not want to provide her name or a statement to the investigation (BR9).

PO Black and his partner, PO Acierno, responded to this 911 call. The mother identified herself as the caller and told PO Black that her son has an OOP against his girlfriend. At the time, the officers did not know the names of the son and his girlfriend. At the end of the incident, the officers learned that the son was § 87(2)(b) and the girlfriend was § 87(2)(b). The mother also stated that § 87(2)(b) damaged her door and was yelling at her. PO Black explained to the CCRB that he needed to do an investigation on the alleged OOP immediately to protect those involved (BR10).

PO Leibowitz and his partner, PO Maresca, responded to a radio run to assist PO Black and PO Acierno. When he arrived, PO Black was talking to the mother and he heard her state there was an OOP between her son and his girlfriend (BR11).

PO Black and PO Leibowitz explained that the mother pointed to a male and female together across the street. From this, the officers identified them as § 87(2)(b) and § 87(2)(b) and needed to start the investigation process (BR10; BR11).

At 1:20 in PO Black's BWC and from 1:15-1:24 in PO Leibowitz's BWC, the mother states, "I don't have the order of protection...This girl got it against my son" and points to a male and female getting out of a vehicle (BR3; BR4).

Both PO Black and PO Leibowitz stated that when they respond to a call involving an OOP, no one is allowed to leave. Officers need to get everyone's information to look up the OOP on a Department phone application called "Portal" to ensure its validity. If the people are actually violating an OOP, they can be arrested. Officers need to begin an investigation to make sure no one is harmed or in danger (BR10; BR11).

PO Leibowitz saw § 87(2)(b) pulling § 87(2)(b)'s arm out of her car. PO Leibowitz needed to continue to investigate the OOP, so he did not want § 87(2)(b) and § 87(2)(b) to leave the scene. PO Leibowitz did not issue any commands to § 87(2)(b) or § 87(2)(b) to stay in the vicinity. PO Leibowitz believed § 87(2)(b) was a threat to § 87(2)(b) because he was pulling her out of the car and the older female alleged there was an OOP. PO Leibowitz needed to ensure everyone's safety. PO Black and PO Acierno were still talking to the mother (BR11).

As soon as § 87(2)(b) and § 87(2)(b) both turned the corner from Warren Street to Laurel Street, PO Leibowitz followed them because he needed to get their information to validate the OOP. PO Leibowitz went to the corner of the block and saw the pair take a right into a driveway under a wooden cover and go over a small wall into a yard. PO Leibowitz could no longer see § 87(2)(b) or § 87(2)(b) but he saw § 87(2)(b)'s hat on the ground, so he knew they had gone in this direction. PO Leibowitz jumped over the wall. PO Leibowitz then saw § 87(2)(b) who stated that § 87(2)(b) was going home. PO Leibowitz then continued to run through a backyard and jumped over a two-foot-high fence leading to the street. There was a car after the two-foot fence. There was a narrow space between the car and the fence about 2-3 feet wide, but PO Leibowitz never made contact with the car that was in § 87(2)(b)'s driveway (BR10; BR11).

The CCRB investigation determined that the car port and first fence led into the curtilage of § 87(2)(b). The CCRB investigation also determined that the second fence, driveway and car belonged to § 87(2)(b) and § 87(2)(b).

In PO Maresca's BWC from 00:22-00:28, PO Maresca follows PO Leibowitz through the car port, over the fences and through the yards. As PO Maresca jumps over the second fence leading to § 87(2)(b)'s driveway, he quickly places his hands and feet on top of § 87(2)(b)'s car as he passed through the narrow area barely making any contact with the vehicle. (BR5).

PO Leibowitz saw § 87(2)(b) running into the driveway of a school, lay down of his own volition, and began to cry. No officers issued any commands or drew their guns. All of the officers approached § 87(2)(b) and PO Black began to get his information (BR11).

PO Leibowitz's BWC from 1:00-3:43 corroborates PO Leibowitz's statement (BR4).

PO Black and PO Acerino ran through the same yards as PO Leibowitz in order to follow PO Leibowitz and PO Acierno because they needed to stay together and continue their investigation into the OOP. Once they saw § 87(2)(b) laying on the ground, he got up and went to talk with the officers and § 87(2)(b). PO Black got their names and ran them in the Portal system. § 87(2)(b) and § 87(2)(b) denied the existence of an OOP. PO Black determined there was no OOP after finding no evidence of this in the Portal system. PO Black did not ever draw his gun and did not see any other officers do so (BR10). He wrote a domestic incident report (BR12).

According to Patrol Guide procedure 208-36 entitled “Family Offenses/Domestic Violence,” members of service must interview the persons separately, collect evidence, and record statements persons present. They must determine if there is probable cause that an offense has been committed and if there is an OOP by using department resources. If the alleged offender has departed prior to police arrival, the officers must conduct a search of the immediate vicinity when probable cause exists that an OOP has been violated. If they determine that a misdemeanor has been committed, they can arrest the offender (BR13).

As per *People v. DeBour*, 40 N.Y. 2d 210, 233 (1976), an officer may stop and question a person when the officer has a reasonable suspicion that the person has committed, is committing, or is about to commit a felony or misdemeanor (BR14).

In *People v Stanislaus-Blache* (93 AD3d 740 [2d Dept 2012]), police officers arrived at a location in which they believed a crime was committed and knew the defendant to be. Furthermore, "the information that the police had obtained was sufficient to establish the existence of an emergency situation" at the location and an entry is permissible if a danger still existed. This case determined that an entry is permissible too if it was not intended only as a search of evidence. The courts decided that the officers' actions were justified given the emergency doctrine, which allows officers to enter a protected area if they have a reasonable belief – approximating probable cause – that there is an emergency at hand and an immediate need for their assistance, and the entry cannot be primarily motivated by any intent to seize evidence (BR15).

People v Theodore 114 A.D.3d 814 [2014] states that the proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by (BR16).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) [REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g) [REDACTED]

[REDACTED]

[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR17).
- Police Officer Robert Leibowitz been a member-of-service for 1 year and this is the first CCRB complaint to which he has been a subject (BR18).
- Police Officer Joseph Maresca been a member-of-service for 1 year and this is the first CCRB complaint to which he has been a subject (BR19).

Mediation, Civil, and Criminal Histories

- As of July 6, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (BR20).
- § 87(2)(b);§§ 86(1)(3)(4);§ 87(2)(c)
- § 87(2)(b);§§ 86(1)(3)(4);§ 87(2)(c)
- § 87(2)(b);§§ 86(1)(3)(4);§ 87(2)(c)
- § 87(2)(b);§§ 86(1)(3)(4);§ 87(2)(c)

Squad: 7

Investigator: Lianne May
Signature

Investigator Lianne May
Print Title & Name

July 30, 2021
Date

Squad Leader: _____

Signature _____

Manager Vanessa Rosen _____

Print Title & Name _____

July 30, 2021 _____

Date _____

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____